

FAX transmission

DATE: May 1, 1995

FROM: HARRY BOADWEE

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TO: Sheila Burke, Esq.
America Online, Inc. (703) 448-9164

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America Online, Inc. (703) 506-1942

**PLEASE DELIVER COPIES TO
MR. BILL DUNN, MR. LEN LEADER AND MR.
MILES GILBURNE**

Christopher Younger, Esq.
Wilson, Sonsini, Goodrich & Rosati, P.C. (415) 496-4092

Please deliver a copy to Allen Morgan, Esq.

WAIS Inc. (415) 356-5444

**Please deliver a copy to Mr. Brewster Kahle
(WAIS, Inc.) and Mr. David Kaiser (Websoft)**

Mr. Pete Buzy
Ernst & Young LLP (703) 903-5200

NO. PAGES: 4 (including cover page)

ACCOUNT NO.: 19649-00100

■ Message:

Attached is a draft amendment to the Promissory Note for the AOL-WAIS Bridge Loan, which was requested by AOL's accountants. To expedite this matter, this draft has not been reviewed by AOL or its accountants, and remains subject to their comments.

IF YOU DO NOT RECEIVE THE CORRECT NUMBER OF PAGES, OR IF THEY ARE NOT CLEAR, PLEASE CALL THE SENDER AT (415) 858-7188 OR SUE BRODSKY AT (415) 494-0600, EXT. 488.

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\$500,000.00

As of March 17, 1995

WIDE AREA INFORMATION SERVERS, INC.

**AMENDED AND RESTATED
SECURED PROMISSORY NOTE**

1. Background. This Secured Promissory Note (this "Note") is made and delivered pursuant to that certain Loan Agreement between Wide Area Information Servers, Inc. and America Online, Inc. dated as of even date herewith (the "Loan Agreement"). Unless otherwise defined in this Note, all capitalized terms used in this Note will have meanings and definitions given to such terms in the Loan Agreement.

2. Obligation. For value received, Wide Area Information Servers, Inc., a California corporation ("Borrower"), hereby promises to pay, subject to the terms hereof, to the order of America Online, Inc., a Delaware corporation ("AOL"), or assigns ("Holder"), in lawful money of United States of America, on the Payment Date (as defined in Section 3 below), the principal sum of Five Hundred Thousand Dollars (\$500,000.00), together with interest accrued on unpaid principal as provided in Section 4 below.

3. Payment Date. The unpaid principal amount outstanding under this Note, together with all accrued but unpaid interest shall be due and payable in full on the date (the "Payment Date") that is the earliest to occur of the following: (a) the first anniversary of the date hereof; (b) the closing of Borrower's next equity financing of an amount equal to or greater than \$1,000,000 in which all or any portion of the investors are generally recognized professional venture capital investors who are not currently shareholders of Borrower; (c) the closing of Borrower's initial public offering of securities pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission; (d) the sale of all or substantially all of the assets of Borrower to any person other than Holder; or (e) the merger or consolidation of Borrower with or into another company (excluding a reincorporation of Borrower into another jurisdiction in which the equity interests of Borrower's shareholders are not changed) or other reorganization of the Borrower following which the shareholders of the Borrower immediately prior to such transaction do not own at least 51% of the company emerging as the survivor or parent company in such transaction, other than such a transaction with Holder.

4. Interest. Interest will accrue on the unpaid principal amount of this Note at a rate (computed on the basis of a 360-day year) equal to the lesser of (i) eight percent (8%) the prime rate as reported from time to time in The Wall Street Journal plus two percent (2%) per annum or (ii) the maximum interest rate permitted by applicable law. All unpaid interest accrued under this Note will be due and payable in full on the Payment Date.

R/L Doc. 186782.1
Rev. Doc. 181789.5
Orig. Doc. 181789.4

5. Payment. All payments and prepayments made under this Note will be made to Holder at 8619 Westwood Center Drive, Vienna, VA 22182, or at such address as Holder may from time to time direct.

6. Prepayments. Unpaid principal and unpaid accrued interest under this Note may be prepaid by Borrower at its option without premium or penalty. All prepayments will be applied first to the payment of interest accrued on this Note and second, if the amount of prepayment exceeds the amount of all such accrued interest, to the payment of principal.

7. Acceleration on Event of Default. If any Event of Default (as defined in the Loan Agreement) occurs, then notwithstanding anything in this Note to the contrary, all indebtedness of Borrower to Holder under the Loan Agreement and this Note (including all unpaid principal and unpaid accrued interest) will, at Holder's sole option and without notice, become immediately due and payable in full.

8. Loan Agreement and Security Agreement.

(a) **Loan Agreement.** This Note incorporates by reference all the provisions of the Loan Agreement, including but not limited to all provisions contained therein with respect to Events of Default, waivers and remedies, and the description of the benefits, rights and obligations of each of Borrower and Holder under the Loan Agreement.

(b) **Security Agreement.** Performance of Borrower's obligations under this Note is secured by Borrower's grant to Holder of a security interest in all of the assets of Borrower pursuant to that certain Security Agreement between Holder and Borrower dated of even date herewith (the "Security Agreement"), which security interest shall be a first priority security interest subject to certain exceptions in the Security Agreement.

9. Subordination. The indebtedness represented by this Note is hereby expressly subordinated in right of payment to the prior payment in full of all of Borrower's indebtedness listed on the Schedule of Indebtedness attached to the Security Agreement.

10. Waiver and Amendment. Any provision of this Note may be amended or modified only by a writing signed by both Borrower and Holder. No waiver or consent with respect to this Note will be binding or effective unless it is set forth in writing and signed by the party against whom such waiver is asserted. No course of dealing between Borrower and Holder will operate as a waiver or modification of any party's rights or obligations under this Note. No delay or failure on the part of either party in exercising any right or remedy under this Note will operate as a waiver of such right or any other right. A waiver given on one occasion will not be construed as a bar to, or as a waiver of, any right or remedy on any future occasion.

11. Governing Law. This Note will be governed by and construed in accordance with the laws of the State of California as applied to agreements between residents thereof to be performed entirely within such state, without reference to that body of law relating to conflict of laws or choice of law.

12. Waivers by Borrower. Borrower hereby waives presentment, notice of nonpayment, notice of dishonor, protest, demand and diligence.

13. Attorneys' Fees. Borrower agrees to pay Holder's reasonable expenses and costs in enforcing and collecting this Note, including without limitation attorneys' fees and expenses and court costs, whether or not a court case is brought or prosecuted to judgment.

14. Successors and Assigns. The provisions of this Note will inure to the benefit of, and be binding on, each party's respective heirs, successors and assigns. Borrower may not assign or delegate any of its obligations under this note without Holder's prior written consent, and any assignment or delegation without such consent shall be void.

15. Severability. The invalidity or unenforceability of any term or provision of this Note will not affect the validity or enforceability of any other term or provision hereof.

16. Amendment and Restatement. This Note amends and restates that certain Secured Promissory Note, dated March 17, 1995, made by Borrower to the order of AOL (the "Prior Note"). Notwithstanding anything to the contrary contained in the Loan Agreement or the Security Agreement, all references to the "Note" contained in the Loan Agreement and the Security Agreement shall be deemed to refer to this Note in place of the Prior Note.

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed in its name and delivered to Holder as of the date first set forth above.

**WIDE AREA INFORMATION
SERVERS, INC.**

By: _____

Name: _____

Title: _____

Agreed:

AMERICA ONLINE, INC.

By: _____

Name: _____

Title: _____